

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE
DIVISION OF LOCAL SERVICES**

Property Tax Bureau
Informational Guideline Release No. 88-211 Disclosure of Assessment Records
April 1988

DISCLOSURE OF ASSESSMENT RECORDS

Chapter 385 of the Acts of 1986
(Amending G.L. Ch. 59)

SUMMARY:

The Public Records Law consists of two components, one which defines a public record and the other which describes the procedure for obtaining public records from a government agency. Ch. 385 addresses both components.

1. Definition of Public Record

a. Background

Public records are broadly defined in the law. Basically, G.L. Ch. 4, §7(26) provides that any material or data, regardless of physical form or characteristics, which is either made or received by a state, county or municipal office is a public record unless the material or data specifically falls within one or more of the narrowly construed exemptions found within the statute.

b. Exemption of Certain Assessment Records

Ch. 4, §7(26)(a) excludes from the definition of public records any material or data which is to "specifically or by necessary implication exempted from disclosure by statute."

Ch. 385 amends G.L. Ch. 59 by adding §52B, which provides such an exemption for certain assessment records.

- (1) Under §52B, certain information furnished to the assessors, as set forth in paragraphs 2(a)-(d) below, is now specifically exempted from disclosure as a public record and may only be inspected by the assessors, the Commissioner, their staffs and other state and local officials in the performance of their official duties, except where:
 - (a) inspection is ordered by the Appellate Tax Board or a court, or
 - (b) the assessed owner, or his authorized representative, requests market data relating to any comparable sale(s) used by the assessors in determining the value of his property.
- (2) The following information is now specifically exempted from disclosure by §52B:
 - (a) written returns provided under Ch. 59 §38D, which authorizes the assessors to request from the owner or lessee of real property information reasonably required to determine the fair cash value of the property,
 - (b) testimony provided under Ch. 59, §38E concerning (i) a written return on real property submitted in response to the assessors' request under Ch. 59, §38D, or (ii) an abatement application,
 - (c) information furnished under Ch. 59, §61A, which authorizes the assessors to request from an applicant for an abatement information on the income and expenses of a property, and
 - (d) reports furnished under Ch. 58A, §8A, which provides for the exchange of appraisal reports between the assessors and taxpayer during Appellate Tax Board proceedings.

2. Access to Public Records

a. Background

G.L. Ch. 66, S. 10 affords broad access to material or data defined as a public record and to non-exempt segregable portions of such a record. The custodian of public records has a legal responsibility (1) to permit the inspection of public records by and (2) to provide a copy of such records to any person upon request.

The use of computers by government agencies to store information collected in the performance of their functions has raised several issues regarding these disclosure responsibilities. Specifically:

- (1) Is the custodian required to permit inspection of requested information by means of direct public access to an agency's computerized records?
- (2) Is the custodian required to provide a copy of the requested information in an electronic medium or is it sufficient to provide paper copies or printouts of computerized records?

b. Access to Computerized Assessment Records

Ch. 385 amends G.L. Ch. 59 by adding §52C, which addresses these disclosure issues in connection with certain computerized assessment records.

Specifically, S. 52C provides that, unless authorized by the Commissioner, the disclosure requirements of the public records law is not to be deemed to authorize:

- (1) public access to terminals or any data processing equipment in order to copy, read, collect, print, analyze or manipulate information collected by the assessors under Ch. 59 and stored electronically, or
- (2) the release of the original or copies of various electronic methods for storing such information (such as tapes, cards, disks, etc.).

§52C is not to be interpreted to prevent an assessed owner, or his authorized representative, from inspecting at the assessors' office any information and records relating to the valuation and assessment of his property and obtaining copies of that information.

GUIDELINES:

These guidelines provide the assessors with information on the implementation of Ch. 385 when responding to requests for access to assessment records.

1. Is the requested information a public record?

The assessors should first determine whether the requested information is a public record. This determination requires the assessors to focus on the content of the requested material (i.e. is it specifically exempted by statute from the definition of a public record) rather than its form (i.e. paper, computer printout, magnetic tape, disk, etc).

In addition to other assessment records that may be specifically exempted (for example, abatement applications under G.L.- Ch. 59, §60), the following is no longer public information:

- a. written returns provided under Ch. 59, §38D, which authorizes the assessors to request from the owner or lessee of real property information reasonably required to determine the fair cash valuation of the property,
- b. testimony provided under Ch. 59, §38E concerning (i) a written return on real property submitted in response to the assessors' request under Ch. 59, §38D, or (ii) an abatement application,
- c. information furnished under Ch. 59, §61A, which authorizes the assessors to request from an applicant for an abatement information on the income and expenses of property, and
- d. reports furnished under Ch. 58A, §8A, which provides for the exchange of appraisal reports between the assessors and taxpayer during Appellate Tax Board proceedings.

2. If the requested information is not a public record, who is authorized to have access to such information?

If the requested information is not a public record, it is not subject to the public disclosure provisions of Ch. 66, §10. In order to determine who may have access to such information, the statute exempting the information from disclosure must be carefully reviewed.

The assessors shall not disclose any information contained in any of the records exempted by Ch. 59 §52B to anyone but the person furnishing such information or his authorized representative, with the following exceptions:

- a. The assessors, the Commissioner of Revenue, the deputies, clerks and assistants of either the assessors or the Commissioner, and other state or local officials in the performance of their official duties, shall have access to the information.

For the sole purpose of providing any analytic, appraisal any/or data processing services necessary for the valuation, classification and taxation of property in a city or town, individuals or the employees of a firm entering a contract to provide such services-may be considered to be "assistants" under the statute and may have access to such non-public information as is reasonably required to perform their obligations under the contract, provided:

- (a) The contractor does not disclose the information except to other authorized persons (the assessors, the Commissioner, their staff, other authorized employees of the contractor).
 - (b) The contractor uses the information only as required in performing its obligations under the contract and does not, before or after the completion of the contract, copy, reproduce, retain or store such information except as set forth in the contract or as instructed in writing by the assessors or Commissioner.
 - (c) The contractor returns any information acquired from the assessors or Commissioner promptly upon request.
 - (d) The contractor takes reasonable steps to ensure the confidentiality and security of the information in its possession or under its control.
 - (e) The contractor agrees to the requirements set forth above, which must be expressly stated in the contract.
- b. The assessors are to disclose the information if ordered to do so by a court or the Appellate Tax Board.
- c. The assessors are to disclose to a person assessed, or his authorized representative, any market data obtained from the exempted records if it was used, in whole or in part, to determine the valuation of his property.
- d. State and local officials may use the information, as necessary, in any-proceeding to, determine or collect property taxes, such as proceedings before the Appellate Tax Board or a court, or for the purpose of criminal prosecution.
- e. The assessors may use the information, in whole or in part, to develop factual, statistical and/or appraisal summaries, reports, models, schedules or other final work products for mass appraisal purposes and must provide public access to such work products absent any number, name, mark or description that would identify any of the source data from being associated with any particular exempted record.

3. If the information is a public record, in what manner is the requester seeking access to it?

The purpose of G.L. Ch. 59, §52C is to clarify the assessors' duties as custodians of public records with respect to providing public access to those records if stored in a computerized form.

Ch. 59, §52C is not intended to shield from disclosure certain assessment information that is clearly a public record merely because the assessors have chosen to computerize their assessment administration system.

- a. Is the requester asking to inspect or to receive a copy of the information in a physical form such as paper or computer printout?

If so, the assessors must provide access to the information in accordance with all applicable requirements of the Public Records Law and regulations promulgated by the Supervisor of Public Records.

- b. Is the requester asking for direct access to the assessors' computer terminals or other data processing equipment in order to inspect or copy the information?

The assessors are not required to provide access to public-records by allowing requesters to use their computer terminals or other data processing equipment to inspect or copy the requested information.

While the assessors are not required to provide access in this manner, they are not precluded from doing so.

c. Is the requester asking to receive a copy of the information in an electronic form such as tapes, cards, disks, etc?

The assessors must provide a copy of the requested information in an electronic form if

- (1) a computerized form of the information exists,
- (2) the computerized form does not **(i)** contain exempted information or **(ii)** require significant programming to screen exempted information, and
- (3) the computerized form can be copied either in-house or by a service bureau that is contractually required or willing to make a copy.

The assessors must provide an electronic copy in the same manner as a physical copy, i.e., in accordance with all applicable requirements of the Public Records Law and regulations promulgated by the Supervisor of Public Records.

While the assessors are not required to provide the requested information in an electronic form under any other circumstances, they are not precluded from doing so.

EXAMPLES:

These situations provide the assessors with examples of the implementation of Ch. 385 when responding to typical requests for assessment records.

Scenario 1

Bud Black, President of the Center City Business Association, owns an office building located in the Center City Heights business district. Black has just received his tax bill, which reflects a recently completed reassessment of property. The new valuations are a topic of discussion at the weekly Business Association luncheon meeting. Based on that discussion, Black cannot understand why his valuation seems to be considerably higher than the value of other office buildings in the Center City Heights area. Black comes to the Assessors' office seeking an explanation and files an application for an abatement. The assessors inform him that all office buildings were valued using the income approach and that the value is comparable to other office buildings in Center City Heights. They later deny the abatement.

A week later, Black's attorney requests that the assessors provide him with the following information:

1. The property inventory records for Black's property and all of the other 15 office buildings in the Center City Heights business district,
2. A computer tape containing the property inventory records for all 258 office buildings in Center City,
3. Any income and expense information furnished by the owners or lessees of any office building in Center City, and
4. Any appraisal data used to value office buildings in Center City.

The Center City assessors have computerized their valuation and assessment administration functions and maintain all records electronically. All data processing is performed in-house by the City's Data Processing Department.

Under the Public Records Law, the assessors must provide Black, or his attorney, with a copy of the property inventory record for Black's property and for the 15 other office buildings in computer printout form. Property inventory records generally contain legal and descriptive information that is not specifically exempted from disclosure. Therefore, such information is clearly a public record regardless of the form in which it is maintained and must be disclosed to any person regardless of their identity or motive for requesting it. Even if the Center City assessors included in their property inventory records any exempted information such as data from abatement applications, the non-exempt

information would still be a public record subject to disclosure. While the assessors would have to provide Black's attorney with a copy of the property inventory record for all office buildings in the City in a printout form if he had requested them, under Ch. 385 they may but are not required to provide the information on a computer tape unless the information exists in a computerized form that contains no-exempted data or requires no significant programming to screen exempted data, and that can be reproduced by the City's Data Processing Department.

With respect to the valuation information requested, the assessors can provide a copy of the written return containing income and expense data furnished by Black on his property, but no other, since disclosure of real property returns submitted to the assessors under Ch. 59, §38D is limited. However, any appraisal documentation developed from information contained in the returns, such as rent schedules, capitalization rates, etc., must be provided in a manner which would not identify any particular return as the source of the data.

Scenario 2

We Sell It, Inc., a real estate brokerage firm, requested from the Everytown assessors a computer tape containing a listing of every parcel in Everytown with the name of the owner of record, the assessed value for land and building, and the zoning classification.

Compuval, Inc., a property revaluation firm, is under contract with the assessors to provide appraisal and data processing services. Compuval also serves as a data processing service bureau for the town.

With the assistance of Compuval, Inc., the assessors within 10 days could provide a computer tape of their valuation book which contains only public information. The cost to We Sell It, Inc. would be the actual cost incurred in reproducing the tape which is \$200.

However, the valuation listing was computerized for tax billing purposes and does not contain data on zoning. The assessors have no other assessment administration records that are computerized, but they do maintain manually prepared property record cards which contain all of the information requested by We Sell It, Inc.

Under the Public Records Law, the assessors are Under no obligation to create the particular record requested by We Sell It, Inc. if it does not exist in an electronic form. However, if requested, the assessors would have to provide at a cost of no more than twenty cents per page a photocopy of every property record card from which We Sell It, Inc. could obtain the requested information. With 1800 parcels in town the cost to We Sell It, Inc. for this information would be \$360. A cost estimate would also have to be furnished prior to supplying the computer tape and/or photocopies to the requester.-

The Commonwealth of Massachusetts
Office of the Secretary of State
Michael Joseph Connolly, Secretary

James W. Igoe
Deputy Secretary of State
Supervisor of Public Records

March 19, 1993
SPR92/568

Dear

Pursuant to G. L. c. 66, §10(b) (1990 ed.) and 950 C.M.R. 32.08 (2), I am in receipt of a petition from appealing the response of the _____ Board of Assessors (Board) to his November 19, 1992, public records request. Specifically, _____ seeks a copy of the town's assessment files, which are stored on magnetic media.

"Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, §7(26)(a-m) (1990 ed.) (emphasis added). The statutory exemptions are strictly and narrowly construed. Attorney General v Assistant Commissioner of the Real Property Department of Boston, 380 Mass. 623, 625 (1980); Attorney General v. Board of Assessors of Woburn, 375 Mass. 430, 432 (1978). Public records, and any non-exempt, segregable portions thereof, are subject to mandatory disclosure upon request. G. L. c. 66, §10(a) (1990 ed.); Reinstein v. Police Commissioner of Boston, 378 Mass. 281, 289-90 (1979) (the statutory exemptions are not blanket in nature).

The plain language of the statute demonstrates that the public record status of data is not dependent upon its physical form. G. L. c. 4, § 7 (2 6) (1990 ed.). Computer cards, tapes, or diskettes are all independent public records. Thus, in the absence of any applicable exemption, the computerized assessment records maintained by the Board are public records subject to the mandatory disclosure provision of the Public Records Law.

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Please note that a custodian's duty to comply with a request for information extends only to records that are in existence and in his custody. See id. (defining "public records" as those nonexempt materials made or received by a public employee); see also 950 C.M.R. 32.03 (defining "custodian" as the public official who has routine access to or control of public records). Moreover, there is no obligation to create a record in response to a public records request. G. L. c. 66§10(a) (1990 ed.) ; 32 Op. Atty Gen. 157, 165 (May 18, 1977); see Disabled Officer's Association v. Rumsfeld, 428 F. Supp. 454, 456 (D.D.C. 1977) (applying this principle in context of the federal Freedom of Information Act). Therefore, a custodian is not required to create a new computer

program to provide information in a format tailored to a requester's needs.¹ Similarly, there is no requirement to add functions or capabilities not already existing within the computer system in order to satisfy a particular request. Rather, a custodian is only obligated to supply the requester with a copy of computerized information in its current format.

You suggest that the records are exempt from the mandatory disclosure provision of the Public Records Law by statute. Therefore, exemption (a) merits consideration. It applies to materials which are:

specifically or by necessary implication exempted from disclosure by statute.

G. L. c. 4, §7(26)(a) (1990 ed.).

An agency may use exemption (a) as a basis for withholding requested materials where the language of the underlying exempting statute suggests the public's right to inspect records under the Public Records Law is restricted. Attorney General v. Collector of Lynn, 377 Mass. 151, 154 (1979); Ottaway Newspaper Company v. Appeals Court, 372 Mass. 539, 545-46 (1977). My authority as Supervisor of Public Records does not permit me to order disclosure of records if a statute mandates nondisclosure. General Chemical Corporation v. Department of Environmental Quality Engineering, 19 Mass. App- Ct. 287, 294 n-4 (1985) -

You rely on G. L. c. 59, § 52C (1990 ed.) as the basis for withholding the requested records. It provides in relevant part:

the provisions of section ten of chapter sixty-six shall not be deemed to authorize public access to terminals or other data processing equipment for the purpose of copying, reading, collecting, printing, analyzing or manipulating any data or other information collected under any provision of this chapter and stored in data processing or computing equipment or to authorize the release of the original or copies of tapes, cards, disc files or other methods of electronic storage of such data or information, unless authorized by the commissioner of revenue.

G. L. c. 59, § 52C (1990 ed.).

The statute thus restricts access to assessors' computerized records in that it leaves the decision to disclose those records solely within the discretion of the Commissioner-of Revenue (Commissioner). However, the Commissioner has provided written guidelines (which you have supplied to this office), with respect to the dissemination of computerized records.

¹ However under the Public Records Law segregation provision, a custodian does have a duty to write a program in order to separate exempt from non-exempt computerized information. See G.L. c. 66, §10(a) (1990 ed.) (duty to segregate).

The guideline generated by the Massachusetts Department of Revenue is entitled Informational Guideline Release, Property Tax Bureau, No. 88-211 (Apr. 1988) (IGR). This document outlines the Commissioner's position and assessors, obligations with respect to providing access to computerized assessment records. Through the IGR, the Commissioner mandates the blanket disclosure of all computerized public records, provided that the assessor is not required to write a new program to duplicate the information. Id. at 7. Additionally, the assessor need not reproduce the record if significant reprogramming is required to delete the exempt information. Id. If the computerized record can be copied in-house or by a service company contractually obligated or willing to produce a copy, the assessor must provide a copy of the requested information **iii** the existing electronic form. Id.

Despite numerous telephone calls from staff attorney Kelly T. MacWilliam to discern your ability to copy the requested data, you have failed to respond. The information sought by XXXXXX is readily available at a publicly accessible data terminal in the assessors, office. Therefore, it is presumed that a significant amount of reprogramming is not necessary to provide with the requested information. As the IGR consequently requires you to comply with request, the Commissioner is deemed to have authorized such disclosure. Thus, G. L. c. 59, § 52C (1990 ed.) does not operate through exemption (a) to permit withholding of the records sought by

Accordingly, you are hereby ordered to provide copy of the requested assessment files which are stored on magnetic media. Failure to comply with this order within ten (10) days of its receipt may result in referral to the Department of the Attorney General for enforcement.

Very truly yours,

James W. Igoe

James W. Igoe

cc:

Ktm3

The Division of Local Services is responsible for oversight of and assistance to cities and towns in achieving equitable property taxation and efficient fiscal management.

The Division regularly publishes IGRs (informational Guideline Releases detailing legal and administrative procedures) and the BULLETIN (announcements and useful information) for local officials and others interested in municipal finance.

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